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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,834	04/05/2001	Philippe Msika	065691/0215	6390

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EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 02/26/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/806,834

Applicant(s)

MSIKA, PHILIPPE

Examiner

Lauren Q Wells

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-14 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claims 1, 3-14, and 16-18 are pending. The Amendment filed 1/7/03, amended claims 1, 3-14, added claims 16-18, and added an abstract.

Response to Arguments

Applicant's arguments with respect to the 35 USC 103 rejection over claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment is sufficient to overcome the 35 USC 112, 1st paragraph, rejection in the previous Office Action.

Applicant's arguments and amendment are persuasive-in-part to overcome the 35 USC 112, 2nd paragraph, rejection in the previous Office Action.

Applicant's declaration filed 12/30/02, Paper No. 6, is directed toward the 35 USC 103 rejection in the previous Office Action. Since this rejection is moot, the declaration is not persuasive.

112 Rejection Maintained

The rejection of claims 1 and 3 under 35 U.S.C. 112 is MAINTAINED for the reasons set forth in the Office Action mailed 7/3/02, Paper No. 5, and those found below.

(i) The rejection of the phrase "skin liable to form stretchmarks" in claim 1 is maintained. Applicant argues, "By using the term "liable to form," Applicant has indicated that stretchmarks do not yet exist, but that the skin is susceptible to stretchmarks or that stretchmarks are likely to form". This argument is not persuasive, as it is still not clear what skin is liable to form stretchmarks. Is ear skin "liable to form stretchmarks"?

(ii) The rejection of the trademarks in claim 3 is maintained. Applicant argues, "the claim scope is not uncertain because the amino acid composition of the fermented soya peptide

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sold under the brand name Phytokine is described in the patent specification at pages 3-4 and the synthetic tripeptide sold under the brand name Kollaren-CPP is described in the patent specification at page 4". This argument is not persuasive. Again the Examiner respectfully points out, a trademark is used to identify a source of goods, and not the good themselves.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(i) Claims 13 is vague and indefinite, as it is confusing. Does the composition further comprise *Enteromorpha compressa* or does it comprise an extract of *Enteromorpha compressa*?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-9, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport et al. (5,444,091) in view of Frei et al. (Internat'l Jn. Of Cosmetic Science).

Rapaport et al. teach a method of topically applying to the skin, alpha hydroxy acids, such as lactic acid, wherein the alpha hydroxy acids comprise 2-30% of the composition. The

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composition can comprise up to 20% of antioxidants, and up 50% pH adjusting agent. The reference lacks a tripeptide. See Cols. 3-4. The reference lacks fermented soya peptides

Frei et al. teach fermented soya peptide extracted from *Lactobacillus* bacterium for increasing skin firmness, elasticity, and tone. The peptide is taught as having a molecular weight of 800-1300 Daltons. Phytokines are taught as preferred peptides. See abstract and pg. 161.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the fermented soya peptide of Frei et al. into the composition of Rapaport et al. because Rapaport et al. is directed to a method of treating stretch marks and Frei et al. is drawn toward a method of increasing skin firmness, elasticity, and tone, wherein increasing skin firmness, elasticity, and tone would treat stretchmarks; thus, one of skill would be motivated to add fermented soya peptide to the composition of Rapaport et al. because of the expectation of achieving an enhanced method of treating stretch marks.

Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport et al. in view of Frei et al. as applied to claims 1, 3-9 16-18 above, and further in view of Briand (5,508,033)

Rapaport and Frei et al. are applied as discussed above. The reference lacks substance-P and neuropeptide Y-inhibitor compound.

Briand teaches extracts of *Enteromorpha* as having anti-radical, cosmetic activity. See Col. 1, line 9-line 50.

The SeaPlant Handbook teaches *Enteromorpha compressa* as a commercial species. See entire disclosure.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the extract of *Enteromorpha*, as taught by Briand, to the composition of the combined references because the combined references teach that their compositions can comprise free-radicals to protect the composition from degradation and extend the shelf life of the composition; thus, one of skill would be motivated to add an extract of *Enteromorpha* to the composition of the combined references because of the expectation of achieving a more stable composition.

Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the *Enteromorpha* of the combined references as *Enteromorpha compressa* because *Enteromorpha compressa* is taught as a commercial species and the purpose of the combined references is to obtain a commercial cosmetic product that can be made in mass and inexpensively.

It is respectfully pointed out that an extract of *Enteromorpha compressa* must contain the substance-P and neuropeptide-Y inhibitor.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport in view of Frei as applied to claims 1, 3-9 16-18 above, and further in view of JP 50088238.

Rapaport and Frei et al. are applied as discussed above. The references lack *Sophora japonica*.

JP '238 teaches a protective skin lotion comprising an extract of *Sophora japonica*. See abstract.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the *Sophora japonica* extract taught by JP '238 to the composition of the

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combined references because the combined references teach that botanical extracts can be added to their composition to protect the composition from degradation and extend shelf life; thus, one of skill would be motivated to add *Sophora japonica* to the composition of the combined references because of the expectation of achieving a composition that treats stretch marks and protects the skin, and is protected from degradation.

Claims 1, 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport et al. (5,444,091) in view of Quelle (DE 4244418).

Rapaport et al. teach a method of topically applying to the skin, alpha hydroxy acids, such as lactic acid, wherein the alpha hydroxy acids comprise 2-30% of the composition. The composition can comprise up to 20% of antioxidants, and up 50% pH adjusting agent. The reference lacks a tripeptide. See Cols. 3-4.

Quelle teaches a cosmetic compositions comprising the tripeptide Gly-His-Lys, wherein this compositions is useful in treating the skin against age and as a radical scavenger (which is synonymous to an antioxidant). See abstract.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the antioxidant of Rapaport et al. as the Gly-His-Lys taught by Quelle because of the expectation of achieving a composition that treats stretch marks and decreases the signs of again.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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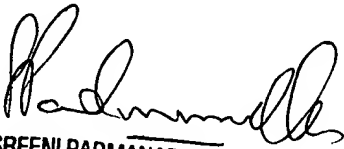
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-5:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw
February 14, 2003


SREENI PADMANABHAN
PRIMARY EXAMINER
2/24/03